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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,166	01/15/2002	Erich Fuchs	Mo-6608/LeA 34,892	1859
157	7590	01/08/2004	EXAMINER	
BAYER POLYMERS LLC			LEE, RIP A	
100 BAYER ROAD				
PITTSBURGH, PA 15205			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/053,166

Applicant(s)

FUCHS, ERICH

Examiner

Rip A. Lee

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-8 and 11.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☒ Other: attachment to advisory action

*Attachment to Advisory Action*

This advisory action follows an after-final response filed on December 12, 2003. Applicants have canceled claims 9, 10, and 12.

Applicants traverse the rejection of claims 1-8 and 11 under 35 U.S.C. 103(a) as being unpatentable over Hert *et al.* in view of Fujii *et al.* As indicated in Papers No. 5 and 8, motivation to combine references flows naturally from the teachings of the prior art.

To recapitulate, Whereas Hert *et al.* discloses crosslinking of carboxylated nitrile rubber with peroxides. Here, the crosslinking accelerant is ZnO. Fujii *et al.*, however, teaches that polyfunctional compounds (ethylene glycol dimethacrylate, trimethylolpropane trimethacrylate, and polyethylene glycol methacrylate) are crosslinking aids of choice where organic peroxides are used to crosslink carboxylated nitrile rubber. Therefore, the skilled artisan would have found it obvious to use the crosslinking aids of Fujii *et al.* in the composition of Hert *et al.*

Applicants submit that this line of reasoning is "counter-intuitive" and "backward" but offer no explanation or support for this conclusion. Applicants also stress in boldface type the claim of one or more metal salts of an acrylate. Hert *et al.* meets this requirement by teaching a composition comprised of zinc acrylate. With regard to Applicants' indication that Hert *et al.* teaches other ingredients (PEG, stearic acid), it is noted that the present invention claims "optionally further additives." Furthermore, the term "comprising" does not exclude any uncited components.

In view of this and previous discussions, the rejection of record has not been withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (571)273-1104.

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January 5, 2004



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